

United States
Circuit Court of Appeals
For the Ninth Circuit.

THOMAS W. PACK, STELLA SCHULER and
JOSEPH K. HUTCHINSON,
Appellants,
vs.
E. THOMPSON,
Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for
the Southern District of California,
Southern Division.

Filed

JAN 23 1915

F. D. Monckton,
Clerk.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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Names and Addresses of Attorneys.

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For Appellee:

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Messrs. CLAYBERG & WHITMORE, 937 Pacific Building, San Francisco, California; and

R. P. HENSHALL, Esq., Los Angeles, California. [3*]

[Citation on Appeal (Original).]

UNITED STATES OF AMERICA,—ss.

The President of the United States, to E. Thompson,
Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's Office of the United States District Court for the Southern District of California, Southern Division, wherein Thomas W. Pack, Stella Schuler and Joseph K.

*Page-number appearing at foot of page of original certified Record.

Hutchinson are appellants, and you are appellee, to show cause, if any there be, why the decree rendered against the said appellants, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable BENJAMIN F. BLEDSOE, United States District Judge for the Southern District of California, this 25th day of December, A. D. 1914.

BENJAMIN F. BLEDSOE,
United States District Judge. [4]

Due service of within Citation on Appeal, and receipt of copy thereof, is hereby admitted this 26th day of December, 1914.

H. L. CLAYBURG,
CLAYBURG & WHITMORE,
Solicitors for Complainant and Appellee, E. Thompson.

[Endorsed]: No. B. 50-Eq. United States District Court for the Southern District of California. Thomas W. Pack, Stella Schuler and Joseph K. Hutchinson, Appellants, vs. E. Thompson, Appellee. Citation on Appeal. Filed Dec. 28, 1914. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk.

*In the District Court of the United States, in and for
the Southern District of California, Southern
Division.*

No. B. 50—EQUITY.

E. THOMPSON,

Complainant,

vs.

THOMAS W. PACK, STELLA SCHULER and
JOSEPH K. HUTCHINSON,

Defendants. [5]

*In the District Court of the United States, Southern
District of California, Southern Division.*

E. THOMPSON,

Complainant,

vs.

THOMAS W. PACK, STELLA SCHULER and
JOSEPH K. HUTCHINSON,

Defendants.

Bill in Equity.

Now comes the above-named complainant and for cause of action against defendants above named complains and alleges:

That complainant is now, and at all times hereinafter stated, was a citizen of the United States and of the State of New Jersey, and a resident of the State of New Jersey; that the defendants, Thomas W. Pack, Stella Schuler and Joseph K. Hutchinson, and each of them, now are, and at all times hereinafter

mentioned were citizens of the United States and of the State of California, and residents of the State of California; that the amount in controversy between the plaintiff and defendants herein in this action exceeds, exclusive of costs and interest, the sum of Three Thousand Dollars (\$3,000.00); that the real estate and placer mining claims affected by this suit are situate in San Bernardino County, State of California, that neither the said complainant nor the said defendants, or either of them, are now, nor for a long time prior to the commencement of this suit, have they or either of them been in the actual possession of the said placer mining claims, hereinafter particularly described.

I.

That during the year 1910, plaintiff jointly with one, H. C. Fursman, W. Huff, H. A. Baker, R. Waymire, P. Perkins, D. Smith and defendant, Thos. W. Pack, duly located and recorded twelve certain [6] placer mining claims, hereinafter more particularly described, situate in and upon Searles Borax Lake, County of San Bernardino, State of California; that plaintiff is now, and ever since the date of said locations, has been the owner and holder of a one-eighth undivided interest in and to the said placer mining claims and each of them; that the said twelve placer mining claims above referred to are more particularly described, named and numbered as follows, and are more fully described in said notices of locations, copies whereof are recorded in the office of the County Recorder of San Bernardino County, State of California, in Volume 82 of Mining Records, at

the pages of said volume hereinafter designated following the respective names of said placer mining claims, to wit:

"The Soda No. 68 Placer Mining Claim," at page 164 thereof;
"The Soda No. 69 Placer Mining Claim," at page 165 thereof;
"The Soda No. 70 Placer Mining Claim," at page 165 thereof;
"The Soda No. 71 Placer Mining Claim," at page 166 thereof;
"The Soda No. 72 Placer Mining Claim," at page 166 thereof;
"The Soda No. 87 Placer Mining Claim," at page 174 thereof;
"The Soda No. 88 Placer Mining Claim," at page 174 thereof;
"The Soda No. 89 Placer Mining Claim," at page 175 thereof;
"The Soda No. 90 Placer Mining Claim," at page 175 thereof;
"The Soda No. 91 Placer Mining Claim," at page 176 thereof;
"The Soda No. 111 Placer Mining Claim," at page 186 thereof;
"The Soda No. 112 Placer Mining Claim," at page 186 thereof.

II.

That during the month of September, 1914, the above-named defendants caused to be served upon plaintiff, a paper which purports to be a notice of forfeiture, a copy of which said so-called "Notice of Forfeiture" is hereto attached, marked Exhibit "A" and made a part hereof. That in and by said pretended Notice of Forfeiture it appears that all of plaintiff's right, claim, title [7] and interest in and to the said twelve above-described placer mining claims, and each thereof, will be forfeited and a cloud cast upon plaintiff's title thereto within ninety days from the date of service of said so-called Notice of Forfeiture upon this plaintiff, unless plaintiff, within said ninety days, pays to defendants or to defendant, Joseph K. Hutchinson, for said defendants, the sum of \$150.00, claimed to be one-eighth of the total amount of money claimed to have been ex-

pended by said defendant Pack upon said claims in the year 1911 as recited in said pretended Notice of Forfeiture. (Exhibit "A.")

III.

Plaintiff alleges that the said defendant, Thos. W. Pack, did not expend, or cause to be expended, during the year 1911, or during any other year, or at any other time, or at all, the sum of \$1,200.00, or any part or portion thereof, or any other sum or sums or any sum at all of his own money or funds upon said twelve above described placer mining claims, or upon any of them, or upon any placer mining claim or claims located and recorded by this plaintiff, or by this plaintiff and others, or in which this plaintiff had or has any interest, in the County of San Bernardino, State of California, or elsewhere, for labor and improvements, or for labor or improvements thereupon, or upon any of them, or for any purpose whatsoever, or at all. Plaintiff further alleges that the said Thos. W. Pack did not expend or cause to be expended, during the year 1911, or during any other year, or at any other time, or at all, the sum of \$100.00 or any part or portion thereof, of his own money or funds, or any other sum or sums, or any sum at all, upon each, or upon any or all of said above described twelve placer mining claims, or upon any placer mining claim or claims, located and recorded by this plaintiff, or by this plaintiff and others, or in which this plaintiff had or has any interest in the County of San Bernardino, State of [8] California, or elsewhere, for labor and improvements, or for labor or improvements thereupon, or

upon any of them, or for any purpose whatsoever, or at all.

IV.

That said pretended Notice of Forfeiture does not, in any way, describe the kind, character or nature of the pretended labor and improvements, or labor or improvements, claimed to have been done and performed upon said claims, or any of them, during the year 1911, by the said Thos. W. Pack.

That plaintiff is unable to ascertain from said pretended Notice of Forfeiture whether the said defendant Pack claims to have actually expended, of his own money or funds, in labor and improvements, or in labor or improvements, upon each of said placer mining claims, the said sum of \$100.00, or the sum of \$1,200.00 upon all of them, or any other sum or amount, or whether the said defendant Pack claims to have expended such money in the transportation of men and supplies to Searles Borax Lake for the purpose of having done upon each and all of said placer mining claims the annual representation work for the year 1911; that plaintiff cannot ascertain from the said pretended Notice of Forfeiture whether the amounts claimed to have been expended by said defendant Pack of his own money or funds upon said placer mining claims, or upon any of them, if he ever expended any money at all thereon, was the value of \$100.00 for each claim, or of the value of \$1,200.00 for all, or whether such labor and improvements, or labor or improvements increased the value of each of said claims in the sum of \$100.00, or the value of them all in the sum of \$1,200.00, or whether said pre-

tended labor and improvements, or labor or improvements, tended in any way to develop any or all of said placer mining claims, or increased or aided in availability for taking ores or minerals from said claims, or from any of them; that this plaintiff further alleges upon [9] information and belief that the said defendant Pack, if he expended any of his own money or funds pretending to be for or in the representation of said placer mining claims, or any of them, for the year 1911, expended a greater part or portion, or all of such money, in the transportation of men and supplies to Searles Borax Lake, San Bernardino County, California, where said placer mining claims are located, as aforesaid, and in furnishing and supplying food, wearing apparel, delicacies and luxuries to the men so transported to said Searles Borax Lake for the purpose of performing said representation work during said year upon said claims.

That said pretended Notice is executed, made and signed by defendants Thos. W. Pack, S. Schuler and Joseph K. Hutchinson; that the same discloses upon its face that neither the said Schuler or the said Hutchinson, or either, or both of them, had any interest or ownership in or to the said placer mining claims mentioned therein, or in or to any part or portion of them, during the year 1911, or during the time it is claimed Thos. W. Pack expended money for labor and improvements thereon, and that neither the said S. Schuler, or the said Joseph K. Hutchinson ever expended, or caused to be expended the money

named in said pretended Notice of Forfeiture, or any money thereon.

V.

That on or about the 25th day of December, 1913, defendant S. Schuler made, executed, acknowledged and delivered her deed and conveyance to one J. A. Shellito, whereby she transferred and conveyed to said J. A. Shellito all of her right, title and interest in and to said above-described placer mining claims, together with her right, title and interest in and to certain other placer mining claims therein described; that thereafter and on or about the 14th day of January, 1914, the said defendant Schuler assumed to convey to defendant Hutchinson the same interest and property [10] that she, the said defendant Schuler, had theretofore conveyed to the said J. A. Shellito, as hereinabove alleged; that the said defendant Hutchinson, at the time of receiving said conveyance was fully informed and had full knowledge that the said defendant Schuler had conveyed all the rights, interest, claims and property therein described to the said J. A. Shellito, a long time prior to the execution of said conveyance by said Schuler to said Hutchinson; that plaintiff further alleges that the said Hutchinson took said conveyance from the said defendant Schuler for the sole and only use and benefit of the Foreign Mines and Development Company, the American Trona Company and the California Trona Company, or for all or a part of them, and not for his own use and benefit, and in pursuance of a combination and conspiracy by and between these defendants in this suit and the said Foreign

Mines and Development Company, the American Trona Company and the California Trona Company, wherein and whereby the said defendants, and the said above-named corporations confederated and combined together to injure plaintiff and to deprive and defraud him of all his right, title and interest in and to said above described placer mining claims.

VI.

Plaintiff further alleges upon his information and belief that the pretended transfer of the said one-eighth interest of the said Thos. V. Pack in and to these said above-described claims by the said S. Schuler to the said Joseph K. Hutchinson, if such transfer was made at all, as set forth in said pretended Notice of Forfeiture, was made and done pursuant to and in order to carry out a combination and conspiracy to injure plaintiff and to deprive and defraud him of all his right, title and interest in and to said placer mining claims and each and all of them; that the said pretended transfer to the said Joseph K. Hutchinson by the said S. Schuler was made and done, if made and done at all, wholly and totally without a valuable or other consideration; [11] that if any consideration at all was paid by the said Joseph K. Hutchinson to the said S. Schuler for the said transfer, the same was advanced and paid by the Foreign Mines and Development Company, a corporation, or by the American Trona Company, a corporation, or by the California Trona Company, a corporation, or by part or all of them, or by some person or persons authorized by them, or part or all of them, or acting for them, or for part or all of them,

and on their behalf, or on the behalf, of part or all of them; that the said Joseph K. Hutchinson took the title to the said one-eighth interest in and to these said above-described claims, if he took the title at all, for the sole benefit and use of the said Foreign Mines and Development Company, or the American Trona Company, or the California Trona Company, or for part or all of them, and not for his own use and benefit; that the said Joseph K. Hutchinson now claims to hold the said title to the said one-eighth interest in and to the said above-described claims, if such title ever passed to him, for the sole and only use and benefit of the said Foreign Mines and Development Company, the said American Trona Company, the said California Trona Company, or for the sole use and benefit of part or all of them, and not for his own use and benefit.

Plaintiff further alleges that the Foreign Mines and Development Company, the American Trona Company and the California Trona Company claim rights and interest in and to the mineral lands covered by said placer locations so made and recorded by plaintiff and others, as hereinabove alleged, and that said Foreign Mines and Development Company, the American Trona Company and the California Trona Company have for some years last past been endeavoring to defeat the locations so made by plaintiff and others, as hereinabove alleged, and that the said Foreign Mines and Development Company, the American Trona Company and the California Trona Company have, and each and every of [12] them has, as plaintiff is informed and believes, fraudu-

lently attempted to procure the right, title and interest of defendant, Pack, in and to said locations so made by plaintiff and others as hereinabove alleged, for the express purpose, and none other, of using the said interest of the said Pack in and to said locations, in such a way and manner as to destroy all of plaintiff's rights and interest therein, and to defraud this plaintiff out of all interest in and to said claims, and each of them; this plaintiff further alleges on like information and belief that the defendant, Joseph K. Hutchinson, has been acting as the agent, representative and attorney of the said Foreign Mines and Development Company, the American Trona Company and the California Trona Company, and each of them, in endeavoring to deprive and defraud plaintiff of his rights and title in and to said placer mining locations, as above alleged; that the said defendant, Joseph K. Hutchinson, under the direction and orders of the said Foreign Mines and Development Company, the American Trona Company and the California Trona Company, and each of them, fraudulently obtained said transfer of the said one-eighth interest in and to said placer mining claims, if he obtained said transfer at all, from defendant Schuler, in pursuance to the combination and conspiracy entered into and carried on by and between said Foreign Mines and Development Company, the American Trona Company and the California Trona Company, and each of them, and the said defendants herein, and each of them, to injure plaintiff and defraud and deprive him of all of his right, title and interest in and to said claims, and each of them; that

in further pursuance of said combination and conspiracy, and under the orders and direction of the said Foreign Mines and Development [13] Company, the American Trona Company and the California Trona Company, or all or part of them, said defendant Joseph K. Hutchinson, and the said defendants Schuler and Pack, caused to be served upon plaintiff the pretended Notice of Forfeiture above described (Exhibit "A"); that the fraudulent transfer of the said one-eighth interest in and to said claims by the said defendant Schuler to the said defendant Hutchinson, if any transfer was made at all, and the serving of the said pretended Notice of Forfeiture upon the said plaintiff as aforesaid, was all done in pursuance to and in the carrying out of a combination and conspiracy entered into by and between the said Foreign Mines and Development Company, the American Trona Company and the California Trona Company, or all or part of them, and the said defendants, and each of them, confederated together for the purpose of injuring plaintiff and depriving and defrauding him of all his right, title and interest in and to said placer mining claims above described.

VII.

Plaintiff further alleges upon his information and belief that the said pretended Notice of Forfeiture was prepared and served upon him pursuant to and in the furtherance of such combination and conspiracy between the defendants herein and the said Foreign Mines and Development Company, the American Trona Company and the California Trona Com-

pany, and that the said Thos. W. Pack never, during the year 1911, or at any other time, expended or caused to be expended, the sum of \$1,200.00 of his own funds or money, or any other sum or amount in and upon said claims, or upon one, or any of them, for any purpose whatsoever, and that neither he nor any of the defendants herein, or their co-conspirators are entitled to any contribution from plaintiff in any sum or amount whatsoever.

VIII.

That Plaintiff is informed and believes that none of the money [14] defendant Pack claims to have expended as and for representation work, or for labor and improvements, or labor or improvements, on the above-described claims, or any thereof, if expended by the said Pack at all, was expended by him for the actual representation and assessment work upon the said claims, or any of them, as required by law; but plaintiff alleges that defendant Pack paid the moneys set forth in the said pretended Forfeiture Notice, if he paid any money at all, for certain goods, wares and merchandise, furnished to certain laborers, employed by plaintiff and his colocators doing assessment work on said claims in the years 1911 and 1912, and for automobile hire in transporting said laborers and supplies to and from said placer mining claims.

IX.

That on the 14th day of January, 1913, one W. W. Colquhoun, through his attorney, Joseph K. Hutchinson, one of the defendants herein, filed a suit against defendant Pack, one Henry E. Lee and one

T. O. Toland, in the Superior Court of the State of California, in and for the City and County of San Francisco, which said suit is entitled "W. W. Colquhoun, Plaintiff, vs. Thos. W. Pack, Henry E. Lee and T. O. Toland, a copartnership, and Thos. W. Pack, Henry E. Lee and T. O. Toland, as Individuals, Defendants, and numbered 46,604 in the record of the Superior Court of the City and County of San Francisco, State of California; that in the verified complaint in said suit plaintiff, W. W. Colquhoun, alleges that he is the assignor of C. J. and E. E. Teagle, and that the sum of \$750.00 is due him for certain goods, wares and merchandise sold and delivered to the said Pack and the other two defendants named in said suit, during the years 1911 and 1912, and that the same had never been paid. This plaintiff alleges upon information and belief that the said goods sued for in said action were purchased by said Pack from C. J. and E. E. Teagle in the town of Johannesburg, Kern County, California; that the the whole amount of [15] said goods, wares and merchandise so purchased by the said Pack from the said Teagles was the sum of \$969.00 and that the said Teagles admit that the sum of \$219.00 has been paid upon said account; that this plaintiff further alleges upon his information and belief that the said sum of \$750.00, sued for in said action, constitutes part of the amount which the said defendants in this suit claim in their said pretended Notice of Forfeiture (Exhibit "A") to have been paid by the said Thos. W. Pack in the year 1911 for doing the assessment work on the above-described placer mining claims,

and for the pretended payment of which the said defendants are now seeking contribution from this plaintiff and threatening a forfeiture of his rights and interests in and to said above described placer mining claims; upon his failure so to contribute, as recited in their said pretended Notice of Forfeiture; that on the 4th day of February, 1914, a judgment was rendered in said suit against the said Pack, in favor of plaintiff, in the whole amount sued for, which said judgment is now standing of record and docketed in Volume No. 29 of Judgments at page 484 of the records of the County Clerk of the City and County of San Francisco, State of California, and has never been satisfied or discharged, either in whole or in part, or set aside, vacated or modified.

X.

That on the 20th day of January, 1913, one M. A. Varney, by his attorney, Joseph K. Hutchinson, one of the defendants herein, filed a suit in the Superior Court of the City and County of San Francisco, State of California, against defendant Thos. W. Pack, one Henry E. Lee and one T. O. Toland, which said suit was entitled in said Superior Court, "M. A. Varney, Plaintiff, vs. Thos. W. Pack, Henry E. Lee and T. O. Toland, as individuals, and Thos. W. Pack, Henry E. Lee and T. O. Toland, a Copartnership, Defendants," and numbered 46,692 in the records of the said Superior Court; that in the verified complaint in said suit the plaintiff [16] therein, the said M. A. Varney, alleged that during the years 1911 and 1912 he furnished supplies and rendered services to defendant Thos. W. Pack and the other defendants

therein, in the sum of \$4,180.00, of which said sum only \$535.00 had been paid; that thereafter and on or about the 4th day of February, 1913, a judgment was entered in said action against the said Thos. W. Pack, in favor of plaintiff, in the whole amount sued for. That plaintiff is informed and believes and therefore alleges the fact to be that said judgment in said suit is still standing of record and has never been satisfied, set aside, vacated or modified. That plaintiff is informed and believes and therefore alleges the fact to be that the last above-named action was brought by the said M. A. Varney to recover the sum of \$4,180.00 from the said Thos. W. Pack, Henry E. Lee and T. O. Toland, for the use of two certain automobiles and certain supplies furnished by the said M. A. Varney to the said Thos. W. Pack, at his special instance and request, in the years 1911 and 1912, and used by the said Thos. W. Pack to transport men hired by plaintiff and his colocators to do the annual assessment work on said above-described placer claims for said years, and supplies for said men, from the City of Los Angeles and elsewhere to the above-described placer claims on Searles Borax Lake, San Bernardino County, California; that plaintiff alleges upon his information and belief that the said sum of \$4,180.00 sued for in said action, constitutes part of the amount the said defendants in this suit claim in their said pretended Notice of Forfeiture (Exhibit "A") to have been paid by the said Thos. W. Pack in the year 1911 for doing the assessment work on the above-described placer mining claims, and for the pretended payment of which the

said defendants are now seeking contribution from this plaintiff, and threatening a forfeiture of his rights and interests to and to said above-described placer claims upon his failure so to contribute, as recited in their said pretended [17] Notice of Forfeiture (Exhibit "A").

XI.

That on the 2d day of September, 1913, one W. W. Colquhoun, by his attorneys, Joseph K. Hutchinson, one of the defendants herein, and Walter Slack, filed a suit in the Superior Court of the State of California, in and for the City and County of San Francisco, against this plaintiff and H. C. Fursman, W. Huff, P. Perkins, H. A. Baker, R. Waymire, D. Smith and S. Schuler, to recover the sum of \$750.00 alleged to be due said plaintiff for the value of certain goods, wares and merchandise, which said suit is entitled in said Superior Court, "W. W. Colquhoun, Plaintiff, vs. H. C. Fursman, W. Huff, R. Waymire, P. Perkins, H. A. Baker, E. Thompson, D. Smith and S. Schuler, a Copartnership, and H. C. Fursman, W. Huff, R. Waymire, P. Perkins, H. A. Baker, E. Thompson, D. Smith and S. Schuler, as Individuals, Defendants," and numbered 50,723 in the files and records of the said Superior Court; that in his verified complaint in said suit the said W. W. Colquhoun alleges that C. J. and E. E. Teagle assigned to him the said claims sued upon in said action; he further alleges that during the years 1911 and 1912 the said C. J. and E. E. Teagle furnished certain goods, wares and merchandise of the value of \$750.00 to defendants therein, including this plaintiff,

and that no part of said sum had been paid; that plaintiff herein alleges the fact to be that said suit was brought by plaintiff for the value of the said goods, wares and merchandise claimed to have been sold and delivered by plaintiff's assignors to Thos. W. Pack in the years 1911 and 1912, and it is claimed that the same were used by a camp of men doing assessment work upon the claims hereinabove described, together with other placer mining claims, during the years 1911 and 1912; that the whole amount of the value of said goods, so alleged to have been sold was \$969.00, but that the said plaintiff in said suit admitted the payment of the sum of \$219.00 on account. That thereafter and on or about the 27th day of October, 1913, R. [18] Waymire filed his verified answer to the complaint in said action; that thereafter a trial was had of the issues therein, and after judgment had been entered against R. Waymire, the said Court on the 11th day of August, 1914, granted the motion of R. Waymire for a new trial thereof; that plaintiff in said suit, as this plaintiff is informed and believes, is now prosecuting an appeal from the order of said Court granting the said motion for a new trial. That plaintiff alleges upon his information and belief that the said sum of \$750.00 sued for in said action, and the sum of \$219.00 admitted to have been paid on account therein, constitute part of the amount the said defendants in this suit claim in their said pretended Notice of Forfeiture (Exhibit "A") to have been paid by the said Thos. W. Pack in the year 1911 for doing the assessment work on the above described

placer mining claims, and for the pretended payment of which by the said Pack, the said defendants are now seeking contribution from this plaintiff, and threatening a forfeiture of his rights and interests in and to said above-described claims upon his failure to so contribute, as recited in their said pretended Notice of Forfeiture.

XII.

That on the 30th day of August, 1913, one M. A. Varney, by his attorneys, Joseph K. Hutchinson, one of the defendants herein, and Walter Slack filed a suit in the Superior Court of the City and County of San Francisco, State of California, against H. C. Fursman, W. Huff, P. Perkins, H. A. Baker, R. Waymire, D. Smith, S. Schuler and this plaintiff, which said suit is entitled in said Superior Court, "M. A. Varney, Plaintiff, vs. H. C. Fursman, W. Huff, R. Waymire, P. Perkins, H. A. Baker, E. Thompson, D. Smith and S. Schuler, a Copartnership, and H. C. Fursman, W. Huff, R. Waymire, P. Perkins, H. A. Baker, E. Thompson, D. Smith and S. Schuler, as Individuals, Defendants," and numbered 50,724 in the files and records of the said Superior Court; that in the verified complaint in said suit the plaintiff therein, the said M. A. Varney, alleged that during the years 1911 and 1912 he furnished supplies and [19] rendered services to the defendants therein in the sum of \$4,170.00, of which said sum only \$500.00 has been paid; that plaintiff alleges the fact to be that the said action was brought by the said M. A. Varney to recover the sum of \$3,670.00 from the said defendants for the use of two

certain automobiles and certain supplies furnished by the said M. A. Varney to the said Pack at his special instance and request, in the years 1911 and 1912 and used by the said Pack to transport men and supplies from the City of Los Angeles and elsewhere to the above-described claims on Searles Borax Lake, San Bernardino County, California.

That thereafter and on or about the 20th day of October, 1913, R. Waymire filed his verified answer to the Complaint in said action; that thereafter various proceedings were had therein and a trial thereof was had before the Court, and that on or about the 16th day of July, 1914, R. Waymire moved the Court for a nonsuit in said action, which motion for nonsuit was by the Court granted; that on or about the 7th day of October, 1914, judgment was entered in favor of R. Waymire, which said judgment is now of record in the office of the Clerk of said Superior Court in Volume 77 of Judgments at page 93 thereof. That this plaintiff alleges upon his information and belief that the said sum of \$3,670.00, sued for in said action, and the sum of \$500.00 alleged to have been paid on account therein, constitute part of the amount the said defendants in this suit claim in their said pretended Notice of Forfeiture (Exhibit "A") to have been paid by the said Thos. W. Pack in the year 1911 for doing the assessment work on the above-described placer mining claims, and for the pretended payment of which, by the said Pack, the said defendants are now seeking contribution from this plaintiff and threatening to forfeit all of plaintiff's rights, title and interest in and to said placer mining claims, if

he does not so contribute, as recited in their said pretended Notice of Forfeiture (Exhibit "A"). [20]

XIII.

That on or about the 26th day of February, 1914, one Raphael Mojica filed an action in the Superior Court in the City and County of San Francisco, State of California, against this plaintiff, his co-locators and defendant S. Schuler, as assignee of the defendant Pack, one Henry E. Lee and various other parties to recover the sum of \$1,443.50, which said action is entitled "Raphael Mojica, Plaintiff, vs. H. C. Fursman, W. Huff, R. Waymire, P. Perkins, H. A. Baker, E. Thompson, D. Smith, T. W. Pack, a copartnership, H. C. Fursman, W. Huff, R. Waymire, P. Perkins, H. A. Baker, E. Thompson, D. Smith, T. W. Pack, an association, and Henry E. Lee, Thomas O. Toland, H. C. Fursman, W. Huff, Rudolph Waymire, P. Perkins, H. A. Baker, E. Thompson, Dudley Smith, Stella Schuler, John Doe, Jane Roe, Richard Roe and Mary Roe, Defendants," and is numbered 54,989 in the files and records of said Superior Court; that in his verified complaint in said action the said plaintiff pretends to be the assignee of thirty certain Mexican laborers, and pretends therein that each of these said Mexican laborers named therein had assigned to him their claims against the defendants therein for doing certain labor and work, in and upon the above-described placer claims by way of assessment work thereon, during the year 1912; that said action is now at issue in said Superior Court; that plaintiff is informed and believes and therefore alleges the fact to be that the

said sum of \$1,443.50 sued for in said action constitutes a portion of the amount the said defendants in this suit claim in their said pretended Notice of Forfeiture (Exhibit "A") to have been paid by the said Thos. W. Pack in the year 1911 for doing the assessment work on the above described placer mining claims and for the pretended payment of which the said defendants are now seeking contribution from this plaintiff, and threatening to forfeit all of plaintiff's right, title and interest in and to said placer mining claims if he does not so contribute, as recited in their said pretended Notice of Forfeiture (Exhibit "A"); that plaintiff is informed and believes that no part of said sum of \$1,443.50 sued for in said action has been paid by the said Thos. [21] W. Pack, or by anyone whomsoever for him.

XIV.

That a short time prior to the dates when the said defendant Thos. W. Pack claims to have expended money for the purpose of doing assessment work on the above described placer mining claims, as claimed in defendants' pretended Notice of Forfeiture (Exhibit "A"), one Henry E. Lee, as duly authorized agent and representative of this plaintiff, and of his colocators, paid to the said defendant, Thos. W. Pack, for this plaintiff, and for his said colocators in their respective proportionate shares, the sum of \$1,000.00, as a portion of their *pro rata* contribution for the doing of said actual assessment work for the years 1911 and 1912 upon said claims, and for the purpose of being applied toward and used in said actual assessment work thereon; that as plaintiff is

informed and believes the said Thos. W. Pack, did so use the said sum of \$1,000.00 for said purpose in said year and that the said amount should be credited to this plaintiff and his colocators in proportion to their respective interests in the said placer mining claims.

XV.

That plaintiff further alleges that during the year 1911, and prior to the time any money is claimed to have been expended by the said defendant Pack in his said pretended Notice of Forfeiture (Exhibit "A"), the said defendant Pack duly acknowledged in writing that he was indebted to one Henry E. Lee, the duly authorized agent of plaintiff, and his colocators, in the sum of \$1,836.00, and that the said Henry E. Lee, acting as such agent for plaintiff and his colocators, directed the said defendant Pack to use and utilize all of said money, or so much thereof as might be necessary, in the annual representation of the placer mining claims hereinabove described in said pretended Notice of Forfeiture (Exhibit "A") for the years 1911 and 1912, and that the said defendant Pack agreed with the said Henry E. Lee that he would so utilize and use said money; that plaintiff claims [22] that said sum of \$1,836.00 is and should be a portion of the money expended by the said defendant Pack, as described in the said pretended Notice of Forfeiture (Exhibit "A"); that the said money and indebtedness was money due and owing to this plaintiff and his colocators from the said defendant Pack, duly evidenced by his written acknowledgment of such indebtedness to the said Henry E. Lee, the duly authorized agent of this plain-

tiff and his colocators, and that said amount should be credited to this plaintiff and his colocators in proportion to their respective interests in their said placer mining claims.

XVI.

Plaintiff further alleges that simultaneously with the service of said pretended Notice of Forfeiture (Exhibit "A") upon plaintiff, the said defendants served upon plaintiff another pretended Notice of Forfeiture, by the terms of which the said defendants claim that the defendant Pack expended during the years 1911 and 1912, the sum of \$5,600.00 for labor and improvements upon one hundred and seventy-five placer claims, among which are included the placer claims in said Exhibit "A," and hereinbefore in this complaint described; that by the terms of said pretended Notice of Forfeiture, so served upon plaintiff simultaneously with the service of said Exhibit "A," as aforesaid, the said defendants claim contribution from this plaintiff twice for the same money and twice for the representation of the placer claims in this complaint specifically described.

XVII.

Plaintiff has no means of knowing or of ascertaining what, if any, amount of his own money or funds said defendant has expended on said placer mining claims, or upon any of them, for annual representation work for the year 1911, and that the only method whereby plaintiff can procure said information is through this Court and by its order compelling the defendant, Thos. W. Pack, [23] to

account for and disclose any and all moneys expended or spent by him upon said placer mining claims, above described, or upon any of them, during the year 1911, for the purpose of representing same, and each and all thereof, for said year, if any money at all was so expended by the said Thos. W. Pack for such purpose, and whose money, if any, was expended by him, how expended, and what amount of the same, if any, was so expended and spent for labor and improvements, or labor or improvements upon the above-described claims, or upon any of them, which could lawfully be counted, considered or applied as such representation work, and for the expenditure of which he would be entitled to *pro rata* contribution from this plaintiff.

XVIII.

Plaintiff hereby and herewith offers and stands ready to pay to the said Thos W. Pack, or these defendants, or either of them, his proportionate share of any moneys belonging to the said defendant Thos. W. Pack which this Court finds were expended by the said Thos. W. Pack on the above-described claims, or any of them, as actual representation work thereon for the year 1911, if the Court finds he so expended any money at all for such purpose.

XIX.

That plaintiff further alleges that if the said defendants are allowed to proceed under said pretended Notice of Forfeiture (Exhibit "A") they will, at the expiration of ninety days from and after the date of the service of the said pretended Notice of Forfeiture, file and record a copy of said Notice

of Forfeiture (Exhibit "A") and an affidavit of service, with the County Recorder of San Bernardino County, California, and claim and assert that all the right, title and interest of this plaintiff in and to said placer claims, and each and all thereof, has been duly and legally forfeited and extinguished and thereby and by means thereof a cloud will be cast upon the title and interest of this [24] plaintiff in and to said placer mining claims, and each of them, and plaintiff be compelled to institute and prosecute a great number of suits to remove said cloud, at a great and exorbitant expense; that unless defendants are enjoined and restrained from proceeding to declare the forfeiture of plaintiff's rights in and to said placer claims and each of them as claimed in their said Notice of Forfeiture (Exhibit "A") this plaintiff will be compelled to institute, prosecute and maintain a multiplicity of suits in order to remove the clouds cast upon his said title and interest in and to each of said placer mining claims.

XX.

That plaintiff has no plain, speedy or adequate remedy at law in the premises, and unless defendants, and each of them, are restrained and enjoined from declaring a forfeiture of all of plaintiff's right, title and interest in and to said claims, and each thereof, pursuant to and in accordance with the pretended Notice of Forfeiture (Exhibit "A"), plaintiff will be irrevocably and irreparably damaged and injured, and be defrauded or deprived of all of his right, title and interest in and to said

placer mining claims, and each of them.

WHEREFORE plaintiff prays:

1. For a decree of this Court preventing any forfeiture of any right, title, interest or claim of this plaintiff in and to said placer mining claims above described, and in and to each and all of them.

2. For a decree of this Court directing said defendants, and each of them, to account and disclose to this plaintiff, and to this Court, for all moneys if any, belonging to the said Pack and constituting his own personal funds, and used and expended by him in procuring labor or improvements, or labor and improvements, which could be legally counted, considered or claimed as a representation or annual assessment work for the year 1911, on the above-described [25] placer mining claims, and on each of them, and that this Court ascertain and determine the amount, if any, thereof, and the proportion, if any, which this plaintiff should pay.

3. That these defendants, and each of them, their agents, attorneys, servants and employees be permanently restrained and enjoined from taking any steps to perfect or establish any forfeiture of plaintiff's rights, titles and interests in or to said placer mining claims, hereinabove described, or in or to any part or portion thereof, or any of them, and that in the meantime during the pendency of this suit, and until the final determination thereof on the merits, said defendants, and each of them, their attorneys, agents, servants, representatives or employees, and each and all of them, be restrained and enjoined from taking any steps to cast a cloud upon the title,

or to forfeit or to perfect or establish any forfeiture of plaintiff's rights, titles or interests in or to said placer mining claims hereinabove described, or any part or portion thereof, or any of them.

4. For plaintiff's costs of suit.

5. For such other and further relief as this Honorable Court may deem just and equitable in the premises.

H. L. CLAYBERG,
CLAYBERG & WHITMORE,
Attorneys for Plaintiff. [26]

*In the District Court of the United States, Southern
District of California.*

E. THOMPSON,

Complainant,

vs.

THOMAS W. PACK, STELLA SCHULER and
JOSEPH K. HUTCHINSON,

Defendants,

State of California,

City and County of San Francisco,—ss.

Henry E. Lee, being first duly sworn, upon his oath says:

That he has read the complaint in the above-entitled action, to which this affidavit is attached, and knows the contents thereof; that he has personal knowledge of all the facts and matters therein alleged, and knows them to be true, except as to those matters therein alleged upon information and belief, and as to them, he believes them to be true.

That he makes this affidavit for the plaintiff and

on his behalf, for the reason that the said plaintiff is now a resident of the City and County of San Francisco, State of California, and is not at the date of the making of this affidavit within said State of California, or within the City and County of San Francisco wherein this affiant resides and has his office and place of business.

HENRY E. LEE,

Subscribed and sworn to before me this 21st day of November, 1914.

[Seal]

H. B. DENSON,

Notary Public in and for the City and County of San Francisco, State of California. [27]

Exhibit "A" [to Bill in Equity].

NOTICE OF FORFEITURE.

710 Claus Spreckles Building,
San Francisco, California, September 14th, 1914.
E. Thompson:

You are hereby notified that I, the undersigned, T. W. Pack, expended during the year 1911 the sum of Twelve Hundred Dollars (\$1200), in amounts of One Hundred Dollars (\$100), for labor and improvements, upon each of the twelve (12) following described placer mining claims:

Those certain placer mining claims situate in and upon Searles Borax Lake, County of San Bernardino, State of California, more particularly named and numbered as follows:

"The Soda No. 68 Placer Mining Claim," the location notice of which said claim is recorded in Volume 82 of Mining Records, in said County of San

Bernardino, State of California, at page number 164 of said volume;

“The Soda No. 69 Placer Mining Claim,” the location notice of which said claim is recorded in Volume 82 of Mining Records, in said County of San Bernardino, State of California, at page number 156 of said volume;

“The Soda No. 70 Placer Mining Claim,” the location notice of which said claim is recorded in Volume 82 of Mining Records, in said County of San Bernardino, State of California, at page number 165 of said volume.

“The Soda No. 71 Placer Mining Claim,” the location notice of which said claim is recorded in Volume 82 of Mining Records, in said County of San Bernardino, State of California, at page number 166 of said volume;

“The Soda No. 72 Placer Mining Claim,” the location Notice [28] of which said claim is recorded in Volume 82 of Mining Records, in said County of San Bernardino, State of California, at page number 166 of said volume;

“The Soda No. 87 Placer Mining Claim,” the location notice of which said claim is recorded in Volume 82 of Mining Records, in said County of San Bernardino, State of California, at page number 174 of said volume;

“The Soda No. 88 Placer Mining Claim,” the location notice of which said claim is recorded in Volume 82 of Mining Records, in said County of San Bernardino, State of California, at page number 174 of said volume;

“The Soda No. 89 Placer Mining Claim,” the location notice of which said claim is recorded in Volume 82 of Mining Records, in said County of San Bernardino, State of California, at page number 175 of said volume;

“The Soda No. 90 Placer Mining Claim,” the location notice of which said claim is recorded in Volume 82 of Mining Records, in said County of San Bernardino, State of California, at page number 175 of said volume;

“The Soda No. 91 Placer Mining Claim,” the location notice of which said claim is recorded in Volume 82 of Mining Records, in said County of San Bernardino, State of California, at page number 176 of said volume;

“The Soda No. 111 Placer Mining Claim,” the location notice of which said claim is recorded in Volume 82 of Mining Records, in said County of San Bernardino, State of California, at page number 186 of said volume;

“The Soda No. 112 Placer Mining Claim,” the location notice of which said claim is recorded in Volume 82 of Mining Records, in said County of San Bernardino, State of California, at page number 186 of said volume.

You are hereby further notified that said sum of \$1200 (being \$100 for each of said claims) was expended by me for the [29] purpose of complying with the requirements of Section 2324 of the Revised Statutes of the United States and amendments thereof, concerning the performance of annual labor upon mining claims.

You are hereby further notified that the amount of \$100 was the amount required to hold each of said claims for the said year ending December 31st, 1911, and that said sum of \$1,200 was the aggregate amount required to hold said twelve claims for said year 1911.

You are hereby further notified that throughout said year of 1911 I was the owner of an undivided one-eighth interest in said claims and therefore a co-owner with you throughout said period, during which you also were the owner of an undivided one-eighth interest in said claims.

You are hereby further notified that subsequent to the making of said expenditures I transferred my said one-eighth interest to S. Schuler, and that she has transferred said one-eighth interest to Joseph K. Hutchinson, who is now the owner thereof.

You are hereby further notified that I, T. W. Pack, together with said S. Schuler, and said Joseph K. Hutchinson, also undersigned, have received no contribution from you for your proportion, to wit, one-eighth, of said expenditures, do, and each of us does hereby make demand upon you for contribution by you of your proportion of said expenditures, to wit, of the sum of \$150, or one-eighth of said sum of \$1,200.

You are further notified that if, within ninety (90) days from the personal service of this notice upon you, you fail or refuse to contribute your proportion of said expenditure, to wit, \$150, or one-eighth of said sum of \$1,200, by payment of the same to said Joseph K. Hutchinson, at Room 710, Claus Spreckels

Building, City and County of San Francisco, State of California, he being duly authorized to collect said money and receipt for the same, your said interest in said mining claims, and each of them [30] will become the property of the undersigned.

Dated, San Francisco, California, September 14, 1914.

(Signed) S. SCHULER.

T. W. PACK.

JOSEPH K. HUTCHINSON.

[Endorsed]: No. B. 50-Eq. U. S. District Court. Southern District, California, Southern Division. In Equity. E. Thompson, vs. Thomas W. Pack, Stella Schuler, Joseph K. Hutchinson. Bill in Equity. Filed Nov. 24, 1914. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. H. L. Clayberg, Clayberg & Whitmore, 937 Pacific Building, San Francisco, Attorneys for Complainant. [31]

*In the District Court of the United States, Southern
District of California, Southern Division.*

E. THOMPSON,

Complainant,

vs.

THOMAS W. PACK, STELLA SCHULER and
JOSEPH K. HUTCHINSON,

Defendants.

Restraining Order and Order to Show Cause.

WHEREAS, plaintiff above named has filed his verified bill in equity in the above-entitled cause

against the defendants above named praying for certain equitable relief and an order of this Court restraining and enjoining defendants and each of them, during the pendency of this suit and until the final determination thereof upon its merits, from in any way or manner casting a cloud upon the title of or taking any steps toward forfeiting or declaring forfeited any of plaintiff's right, title or interest in and to certain placer mining claims in said bill of complaint and hereinafter fully described, named and numbered; and,

WHEREAS, upon a reading of plaintiff's said bill of complaint it satisfactorily appears to the Court therefrom that plaintiff may suffer irreparable and irrevocable damage and injury, before the hearing of the order to show cause hereinafter set forth, unless, pending the hearing on said order to show cause, said defendants and each of them are by this Court restrained as hereinafter set forth, and other good cause appearing. [32]

NOW, THEREFORE, IT IS HEREBY ORDERED that you, the said defendants, Thos. W. Pack, S. Schuler and Jos. K. Hutchinson, and each of you, your and each of your attorneys, agents, servants and employees are hereby specially restrained and enjoined from in any way or manner taking any steps toward forfeiting or declaring a forfeiture of plaintiff's right, title and interest in and to certain hereinafter described placer mining claims, and each of them, pursuant to or in accordance with your pretended Notice of Forfeiture heretofore, and within ninety days prior to the date hereof, served upon

plaintiff herein, a copy of which is attached to the said bill of complaint and marked Exhibit "A," until the hearing of the application of plaintiff for an injunction *pendente lite* in this cause, which said application is hereby set for hearing before this Court on the 7th day of December, 1914, or until the further order of this Court;

IT IS FURTHER ORDERED that you and each of you appear before this Court at 10:30 o'clock A. M. on the 7th day of December, 1914, at the courtroom of Division No. 2 of the District Court of the United States for the Southern District of California, in the Federal Building, in the City of Los Angeles, County of Los Angeles, State of California, and then and there to show cause, if any you have, why said restraining order, as hereinabove made, should not be made permanent during the pendency of this suit and until final determination thereof on its merits.

Said placer mining claims above named are described, numbered and named as follows, being situate on Searles Borax Lake, County of San Bernardino, State of California, the location notices of which said placer claims are recorded in Volume 82 of Mining Records in the office of the County Recorder of the said County of San Bernardino, State of California, at the following respective pages of said Volume 82 set down opposite and following the hereinafter [33] described, named and numbered placer mining claims:

"The Soda No. 68 Placer Mining Claim," at page 164 thereof;
"The Soda No. 69 Placer Mining Claim," at page 165 thereof;
"The Soda No. 70 Placer Mining Claim," at page 165 thereof;
"The Soda No. 71 Placer Mining Claim," at page 166 thereof;
"The Soda No. 72 Placer Mining Claim," at page 166 thereof;
"The Soda No. 87 Placer Mining Claim," at page 174 thereof;
"The Soda No. 88 Placer Mining Claim," at page 174 thereof;
"The Soda No. 89 Placer Mining Claim," at page 175 thereof;
"The Soda No. 90 Placer Mining Claim," at page 175 thereof;
"The Soda No. 91 Placer Mining Claim," at page 176 thereof;
"The Soda No. 111 Placer Mining Claim," at page 186 thereof;
"The Soda No. 112 Placer Mining Claim," at page 186 thereof.

Dated this 24th day of November, 1914.

BENJAMIN F. BLEDSOE,

Judge. [34]

[Indorsed]: No. B. 50-Eq. U. S. District Court, Southern District of California, Southern Division. In Equity. E. Thompson, vs. Thomas W. Pack, Stella Schuler, Joseph K. Hutchinson. Restraining Order and Order to Show Cause. Filed Nov. 24, 1914. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. H. L. Clayberg, Clayberg & Whitmore, 937 Pacific Building, San Francisco, Attorneys for Complainant. Eq. O. Bk. [35]

[Order Continuing Hearing to December 8, 1914.]

At a stated term, to wit, the July Term, A. D. 1914, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the court-room thereof, in the city of Los Angeles, on Monday, the seventh day of December, in the

year of our Lord, one thousand nine hundred and fourteen. Present: The Honorable BENJAMIN F. BLEDSOE, District Judge.

No. B. 50—EQUITY.

E. THOMPSON,

Complainant,

vs.

THOMAS W. PACK et al.,

Defendants.

This cause coming on this day to be heard under and pursuant to the order heretofore made and entered herein that defendants show cause why an injunction *pendente lite* should not be issued herein, pursuant to the prayer of the bill of complaint; A. V. Andrews, Esq., appearing as counsel for complainant; Charles W. Slack, Esq., appearing as counsel for defendants; it is ordered that this cause be, and the same hereby is continued until Tuesday, the 8th day of December, 1914, at 10:30 o'clock A. M., for said hearing. [36]

[Order Submitting Application for Preliminary Injunction.]

At a stated term, to wit, the July Term, A. D. 1914, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the courtroom thereof, in the city of Los Angeles, on Tuesday, the eighth day of December, in the year of our Lord, one thousand nine hundred and fourteen. Present: The Honorable BENJAMIN F. BLEDSOE, District Judge.

No. B. 50—EQUITY.

E. THOMPSON,

Complainant,

vs.

THOMAS W. PACK et al.,

Defendants.

This cause having come on this day to be heard under and pursuant to the order heretofore made and entered herein that defendants show cause why an injunction *pendente lite* should not be issued herein, pursuant to the prayer of the bill of complaint; A. V. Andrews, Esq., appearing as counsel for complainant; Charles W. Slack, Esq., appearing as counsel for defendants; and said application for a preliminary injunction having been argued, in connection with the argument of the application for a preliminary injunction in cause No. B. 46—Equity. E. Thompson, Complainant, vs. Thomas W. Pack et al., Defendants, by Charles W. Slack, Esq., of counsel for defendants, and by A. V. Andrews, Esq., of counsel for complainant; it was ordered that this cause be, and the same thereby was submitted to the Court for its consideration and decision on complainant's application for a preliminary injunction and the argument thereof. [37]

[Order Granting Application for Injunction
Pendente Lite, etc.]

At a stated term, to wit, the July Term, A. D. 1914, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the courtroom thereof, in the city of Los Angeles, on Friday, the eleventh day of December, in the year of our Lord, one thousand nine hundred and fourteen. Present: The Honorable BENJAMIN F. BLEDSOE, District Judge.

No. B. 50—EQUITY.

E. THOMPSON,

Complainant,

vs.

THOMAS W. PACK et al.,

Defendants.

This cause having heretofore been submitted to the Court for its consideration and decision under and pursuant to the order heretofore made and entered herein that defendants show cause why an injunction *pendente lite* should not be issued herein, pursuant to the prayer of the bill of complaint; and the Court having fully considered the same and being fully advised in the premises, now, in accordance with the conclusions of the Court, expressed in its opinion this day filed in cause No. 46 B.—Equity, E. Thompson, Complainant, vs. Thomas W. Pack et al., Defendants, it is ordered that complainant's application for said temporary injunction be, and the same

hereby is granted, counsel for complainant to prepare and present a suitable order in accordance herewith. [38]

[Opinion.]

*In the District Court of the United States, in and for
the Southern District of California.*

C. THOMPSON,

Complainant,

vs.

THOMAS W. PACK, STELLA SCHULER and
JOSEPH K. HUTCHINSON,

Defendants.

This matter is before the Court on an order to show cause why a temporary injunction *pendente lite* should not issue restraining the defendants from putting of record certain Notices of Forfeiture with Affidavits of Service thereof; such notices being those provided in Section 2324 Revised Statutes of the United States, and Section 14260 of the Civil Code of the State of California; with reference to forfeiting of part interests of mining claims.

The bill in equity as filed contains much matter that seems to be immaterial, much that is purely "epithetic," to use an expressive phrase, and a great deal averred upon information and belief and not positively. With respect to this latter, the Court feels that it should not, of course, consider it upon this order to show cause, because of the fact that under the law the complainant, to be entitled to positive relief at this juncture, and in advance of a

hearing, must base his request for such relief upon positive allegations. Laying out of consideration, however, the matters referred to above, it may be said, that certain facts are stated with such positiveness and cogency as that they fall within the realm of indispute upon this hearing. Briefly summarized, they are: That the plaintiff in the year nineteen hundred and ten, in conjunction with the defendant Pack, [39] and certain other individuals mentioned, located and recorded one hundred and seventy-five certain placer mining claims, situate in the County of San Bernardino, State of California; That plaintiff is now, and ever since the day of said location, has been the owner and holder of a one-eighth undivided interest in and to the said placer mining claims, and each of them; That during the month of September, in the year nineteen hundred and fourteen, the defendant herein, caused to be served upon plaintiff a certain notice of forfeiture, set out in the bill of complaint, and by which it was sought, pursuant to the sections of the Revised Statutes and Civil Code above referred to, to forfeit the title of plaintiff in and to each and all of the one hundred seventy-five (175) described placer mining claims heretofore referred to; that said notice contained the appropriate statements that unless plaintiff, within ninety days after the service of the same upon him, paid to the defendants or to the defendant Joseph K. Hutchinson, for said defendants, the sum of seven hundred dollars (\$700), claimed to be one-eighth of the total amount of money claimed to have been expended by said defendant Pack, upon said

claims, in the years nineteen hundred and eleven (1911) and nineteen hundred twelve (1912), that the interest of plaintiff would become forfeited to the said Joseph K. Hutchinson. Plaintiff then alleges that the said Pack did not expend, or cause to be expended of his own money, during the years nineteen hundred and eleven (1911) and nineteen hundred and twelve (1912), or at any other time, the sum of fifty-six hundred dollars (\$5600), of which the said seven hundred dollars (\$700) was the one-eighth part, upon or for, the benefit of said placer mining claims, or at all; that at least twenty-eight hundred and thirty-six (\$2836) was contributed by plaintiff and his colocators to the defendant Pack, for the purpose of doing the assessment work upon the claims mentioned, for the years nineteen [40] hundred and eleven (1911) and nineteen hundred and twelve (1912). Plaintiff further alleges that whatever title or interest the said Hutchinson obtained or holds in and to the said claims, was obtained and is held for the sole use and benefit of the Foreign Mines and Development Company, and the American Trona Company, and the California Trona Company. It is also alleged that in the year nineteen hundred and twelve (1912), while plaintiff and his colocators were engaged in the performance of the annual assessment work upon said claims, they were forcibly prevented from completing the said assessment work, and were forcibly ejected and driven from said claims, by the said Foreign Mines and Development Company, the American Trona Company, and the California Trona Company.

If these facts thus alleged be true, and at this time the Court must assume them to be true, because no affidavit or answer in opposition to or in explanation of them, has been presented by the defendants, then it would appear that the defendants have no right to claim or exact a forfeiture, as against the plaintiff, for his failure to contribute his share of the assessment work, and that the proceedings on the part of defendants, leading up to the service of the notice of forfeiture, and in the recording thereof, are substantially a nullity, in so far as they seem to have effected a divestiture of plaintiff's undivided interest in and to the mining property in question. On such a state of facts, I apprehend the Court, after an accounting or other appropriate investigation, would make a decree determinative of the rights of the parties and the protection thereof. This decree, under the case as made by the facts to be taken as true would in its substantial aspects be in favor of the plaintiff. The only question for determination, then, is whether or not the plaintiff should be protected in his rights, pending such final determination by the Court, and whether or [41] not the strong arm of the Court should be employed at this time to enjoin the defendants from placing of record, that which plaintiff claims would constitute a cloud upon its title, to wit: The notice of forfeiture with the affidavit of service thereof. That it would constitute such a cloud, I think, is indisputably clear. It was held in *Pixley vs. Huggins*, 15 Cal. 128, that the true test as to whether or not a certain instrument would cast a cloud upon the title, upon the plaintiff's property,

was this: "Would the owner of the property, in an action of ejectment brought by the adverse party, founded upon the deed be required to offer evidence to defend a recovery? If such proof would be necessary, the cloud would exist; if the proof would be unnecessary no shade would be cast by the presence of the deed." This decision has been cited frequently, and I apprehend states the law concisely. In this case it is apparent that the filing of the notice and affidavit of service, would *prima facie* serve to divest plaintiff of his interest in the properties and that it would require extrinsic evidence on his part to defeat a suit of ejectment, based upon the forfeiture apparently evidenced by the notice of labor done and failure to contribute thereto. For these reasons I am constrained to hold that plaintiff has presented a *prima facie* case, free from colorable doubt, is entitled to a temporary injunction *pendente lite*.

Plaintiff's counsel will draft an appropriate order.

BENJAMIN F. BLEDSOE,

Judge.

[Endorsed]: No. B 46-Eq. United States District Court, Southern District of California, Southern Division. C. Thompson, vs. Thomas W. Pack et al. Opinion Re Injunction *Pendente Lite*. Filed December 11, 1914. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk. [42].

[Order for Injunction Pendente Lite.]

District Court of the United States, Southern District of California.

B. 50—EQUITY.

E. THOMPSON,

Complainant,

vs.

THOMAS W. PACK, STELLA SCHULER and
JOSEPH K. HUTCHINSON,

Defendants.

On the return of the order to show cause made by me in the above-entitled action on the 24th day of November, 1914, and returnable on the 7th day of December, 1914, and this cause coming on regularly for hearing on the return day thereof, upon the verified bill of complaint. After hearing Messrs. Clayberg & Whitmore for the complainants and Messrs. Charles W. Slack and Joseph K. Hutchinson, for the defendants, and no sufficient cause to the contrary being shown:

IT IS ORDERED that the said order to show cause be, and the same hereby is made absolute until the final determination of this suit. It is further ORDERED that you, the said defendants, Thomas W. Pack, Stella Schuler and Joseph K. Hutchinson, and each of you, your and each of your attorneys, agents, servants and employees, are hereby specifically restrained and enjoined from in any way or manner taking any steps towards forfeiting or declaring a forfeiture of plaintiff's right, title and interest in,

and to those certain placer mining claims named and described in the Bill of Complaint filed herein and each of them, pursuant to or in accordance with your pretended Notice of Forfeiture heretofore, and within ninety days prior to the date of the commencement of this suit served upon plaintiff herein, until the final hearing and termination of this suit or until the further order of this court.

The Clerk will issue the Writs accordingly.

Dated this 11th day of December, 1914.

BENJAMIN F. BLEDSOE,
Judge of Said District Court. [43]

[Indorsed]: "No. B. 50—Equity. In the District Court of the United States in and for the Southern District of California, Southern Division. E. Thompson, Complainant, vs. Thomas W. Pack et al., Defendants. Order for Injunction *Pendente Lite*. Filed Dec. 15, 1914. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. Clayberg & Whitmore, Attorneys for Dfts. Eq. Order Book." [44]

*In the District Court of the United States, in and for
the Southern District of California.*

No. B. 50—EQUITY.

E. THOMPSON,

Complainant,

vs.

THOMAS W. PACK, STELLA SCHULER and
JOSEPH K. HUTCHINSON,

Defendants.

Assignment of Error.

Now come Thomas W. Pack, Stella Schuler and Joseph K. Hutchinson, defendants above named, and make and file this their assignment of error:

I

That the District Court of the United States, in and for the Southern District of California, erred in giving, making and entering its order of the 11th day of December, 1914, granting the application of the above named complainant for a temporary injunction *pendente lite* in the above-entitled proceeding.

II.

That the District Court of the United States, in and for the Southern District of California, erred in giving, making and entering its order of the 11th day of December, 1914, wherein and whereby it ordered that a temporary injunction *pendente lite* be issued in the above-entitled proceeding, restraining the defendants in the above-entitled proceeding, and each of them, from filing affidavits of the service of the notice of forfeiture in the complaint on file in the above-entitled proceeding and in said temporary injunction *pendente lite* referred to and described.

San Francisco, Cal., December 23d, 1914.

CHARLES W. SLACK,

JOSEPH K. HUTCHINSON,

Solicitors for Defendants. [45]

[Indorsed]: "No. B. 50—Equity. In the United States District Court, in and for the Southern District of California, Southern Division. E. Thomp-

son, Complainant, vs. Thomas W. Pack et al., Defendants. Assignment of Error (Order of Dec. 11, 1914). Original. Filed Dec. 24, 1914. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. Charles W. Slack, Joseph K. Hutchinson, Solicitors for Defendants, 923 First National Bank Bldg., San Francisco, Cal.” [46]

*In the District Court of the United States, in and for
the Southern District of California.*

No. B. 50—EQUITY.

E. THOMPSON,

Complainant,

vs.

THOMAS W. PACK, STELLA SCHULER and
JOSEPH K. HUTCHINSON,

Defendants,

Petition for an Order Allowing an Appeal.

The above-named defendants, Thomas W. Pack, Stella Schuler and Joseph K. Hutchinson, conceiving themselves aggrieved by the order entered on the 11th day of December, 1914, in the above-entitled proceeding, which said order granted the above-named complainant's application for a temporary injunction *pendente lite*, do, and each of them does, hereby appeal from said order to the United States Circuit Court of Appeals, for the Ninth Circuit, and they pray, and each of them prays, that this, their appeal, may be allowed; and that a Transcript of the record and proceedings and papers upon which said

order was made, duly authenticated, may be sent to the said United States Circuit Court of Appeals, for the Ninth Circuit.

San Francisco, Cal., December 23d, 1914.

CHARLES W. SLACK,
JOSEPH K. HUTCHINSON,

Solicitors for Defendants.

And now, to wit, on December 24, 1914, it is ordered that the foregoing appeal be allowed as prayed for, upon giving bond in sum of \$250.00 for costs on appeal.

BENJAMIN F. BLEDSOE,
District Judge. [47]

[Indorsed]: "No. B. 50—Equity. In the United States District Court, in and for the Southern District of California, Southern Division. E. Thompson, Complainant, vs. Thomas W. Pack et al., Defendants. Petition for and Order Allowing Appeal. (Order of Dec. 11, 1914.) Original. Filed Dec. 24, 1914. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. Charles W. Slack, Joseph K. Hutchinson, Solicitors for Defendants, 923 First National Bank Bldg., San Francisco, Cal." [48]

*In the District Court of the United States, in and for
the Southern District of California, Southern
Division.*

No. B. 50—EQUITY.

E. THOMPSON,

Complainant,

vs.

THOMAS W. PACK, STELLA SCHULER and
JOSEPH K. HUTCHINSON,

Defendants,

Undertaking on Appeal.

KNOW ALL MEN BY THESE PRESENTS:
That United States Fidelity & Guaranty Company, a
corporation, duly incorporated under and by virtue
of the laws of the State of Maryland and authorized
by its charter and by law to become sole surety on
bonds and undertakings, is held and firmly bound
unto E. Thompson, in the full and just sum of Two
Hundred Fifty Dollars (\$250.00), lawful money of
the United States, to be paid to the said E. Thompson,
her executors, administrators or assigns; to which
payment the said United States Fidelity & Guar-
anty Company binds itself by these presents.

IN WITNESS WHEREOF, the United States
Fidelity & Guaranty Company has caused these pres-
ents to be executed by its duly authorized attorney
in fact and has caused these presents to be sealed with
the seal of the United States Fidelity & Guaranty
Company on this 24th day of December, in the year
of our Lord one thousand nine hundred and fourteen.

WHEREAS, lately, at a District Court of the United [49] States, for the Southern District of California, Southern Division, in a suit depending in said Court between E. Thompson as complainant and Thomas W. Pack, Stella Schuler and Joseph K. Hutchinson as defendants, an order was entered on the 11th day of December, 1914, in the above-entitled proceeding, which said order granted the above-named complainant application for a temporary injunction *pendente lite*. And the said Thomas W. Pack, Stella Schuler and Joseph K. Hutchinson, having obtained from said Court an order allowing an appeal to reverse the said order in the aforesaid suit, and a citation directed to the said E. Thompson citing and admonishing her to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, in the State of California, to wit, within thirty days after the 24th day of December, 1914.

Now, the condition of the above obligation is such that if the said Thomas W. Pack, Stella Schuler and Joseph K. Hutchinson shall prosecute an appeal to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; otherwise to remain in full force and virtue.

UNITED STATES FIDELITY & GUAR-
ANTY COMPANY.

[Seal]

By Van R. Kelsey.

Its Attorney in Fact.

State of California,
County of Los Angeles,—ss.

On this 24th day of December, in the year one thousand nine hundred and fourteen, before me, Hallie D. Winebrenner, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared Van R. Kelsey, known to me to be the duly authorized attorney in fact of The United States Fidelity and Guaranty Company, and the same person whose name is subscribed to the within instrument as the attorney in [50] fact of said Company, and the said Van R. Kelsey duly acknowledged to me that he subscribed the name of The United States Fidelity and Guaranty Company thereto as prinicpal and his own name as attorney in fact.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

[Seal] HALLIE D. WINEBRENNER,
Notary Public in and for Los Angeles County, State
of California.

(Cancelled Revenue stamps, 21½¢.)

Premium on bond—\$500.

[Endorsed]: No. B. 50—Equity. In the United States District Court, in and for the Southern District of California, Southern Division. E. Thompson, Complainant, vs. Thomas W. Pack et al., Defendants. Undertaking on Appeal. The form of undertaking and sufficiency of surety approved. Benjamin F. Bledsoe, Judge. 12/25/14. Filed De-

ember 25, 1914. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk. Macomber & Pendleton, Attorneys, 915 Black Building, Los Angeles, Cal., A-2929, Main 5464. [51]

In the District Court of the United States, in and for the Southern District of California.

No. B. 50—EQUITY.

E. THOMPSON,

Complainant,

vs.

THOMAS W. PACK, STELLA SCHULER and
JOSEPH K. HUTCHINSON,

Defendants,

Praeceptum for Record on Appeal.

To the Clerk of the District Court of the United States, in and for the Southern District of California, Southern Division:

Sir: You are hereby instructed to prepare a certified copy of the record in the above-entitled proceeding for use upon an appeal from the order heretofore given, made and entered in the above-entitled proceeding on the 11th day of December, 1914, granting the application of the above-named complainant for a temporary injunction *pendente lite* and ordering said injunction *pendente lite* to issue; said record will be made up of the following papers, records and proceedings in said above-entitled proceeding:

The bill of complaint therein;

The temporary restraining order and order to show

cause given and made therein on the 24th day of November, 1914;

The minute order made in the above-entitled proceeding upon the return of said order to show cause on the 7th day of December, 1914, showing the making of a motion *ore tenus* on behalf of the defendants in the above-entitled proceeding to [52] dissolve said temporary restraining order, and submitting said application for an injunction *pendente lite* and said motion;

The minute order in the above-entitled proceeding given, made and entered upon the 11th day of December, 1914, granting the said complainant's application for an injunction *pendente lite*;

The order given, made and entered in said proceeding on the 11th day of December, 1914, which said order restrained and enjoined defendants above named from doing certain acts in said order and in the bill of complaint in the above-entitled proceeding more particularly set out and described, and ordered that an injunction *pendente lite* issue in the above-entitled proceeding;

The injunction *pendente lite* issued pursuant to said order of December 11, 1914, which said injunction was issued and is dated the 15th day of December, 1914;

The assignment of error of the above-named defendants filed with their petition for an order allowing the appeal above specified and referred to:

You will forthwith make up your certified copy of the foregoing papers and transmit the same, with the original petition for an order allowing an appeal and

the citation issued thereon, with the return of the service of said citation, to the Clerk of the United States Circuit Court of Appeals, for the Ninth Circuit, at San Francisco, California.

San Francisco, Cal., December 23d, 1914.

CHARLES W. SLACK,
JOSEPH K. HUTCHINSON,
Solicitors for Defendants. [53]

Service of the Within Praecept for Record on Appeal this 23d day of December, 1914, is hereby admitted.

H. L. CLAYBERG,
CLAYBERG & WHITMORE,
Attorneys for Complainant.

[Endorsed]: No. B. 50—Equity. In the United States District Court, in and for the Southern District of California, Southern Division. E. Thompson, Complainant, vs. Thomas W. Pack, et al., Defendants. Praecept for Record upon Appeal. (Order of Dec. 11, 1914.) Original. Filed Dec. 24, 1914. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. Charles W. Slack, Joseph K. Hutchinson, Solicitors for Defendants, 923 First National Bank Bldg., San Francisco, Cal. [54]

[Certificate of Clerk U. S. District Court to
Transcript of Record.]

*In the District Court of the United States, in and for
the Southern District of California, Southern
Division.*

No. B. 50—EQUITY.

E. THOMPSON,

Complainant,

vs.

THOMAS W. PACK, STELLA SCHULER, and
JOSEPH K. HUTCHINSON,

Defendants.

I, Wm. M. Van Dyke, Clerk of the District Court of the United States of America, in and for the Southern District of California, do hereby certify the foregoing fifty-four (54) typewritten pages, numbered from 1 to 54, inclusive, and comprised in one (1) Volume, to be a full, true and correct copy of the bill of complaint, temporary restraining order and order to show cause given and made on the 24th of November, 1914, minute orders of the 7th, 8th and 11th days of December, 1914, respectively, opinion of the Court given in case B. 46—Equity, S. D. upon the making of the order granting application for injunction *pendente lite*, order of December 15, 1914, granting injunction *pendente lite*, assignment of error, petition for and order allowing appeal, undertaking on appeal, and praecipe for transcript of record on appeal in the above and therein entitled ac-

tion; and I do further certify that the above constitute the record on appeal in said action as specified in the said praecipe for transcript of record on appeal, filed on behalf of the appellants in said action.

I do further certify that the cost of said transcript [55] is \$31.50 the amount whereof has been paid me by Thomas W. Pack, Stella Schuler and Joseph K. Hutchinson, the appellants in said action.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said District Court of the United States of America, in and for the Southern District of California, Southern Division, this 30th day of December, in the year of our Lord, one thousand nine hundred and fourteen, and of our Independence the one hundred and thirty-ninth.

[Seal]

WM. M. VAN DYKE.

Clerk of the District Court of the United States of America, in and for the Southern District of California.

[Ten cents Internal Revenue Stamp. Canceled Dec. 30, 1914. Wm. M. Van Dyke.] [56]

[Endorsed]. No. 2536. United States Circuit Court of Appeals for the Ninth Circuit. Thomas W. Pack, Stella Schuler and Joseph K. Hutchinson, Appellants, vs. E. Thompson, Appellee. Transcript of Record. Upon Appeal from the United States

District Court for the Southern District of California, Southern Division.

Filed December 31, 1914.

FRANK D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.